HON'BLE MR JUSTICE A. GOPAL REDDY

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WRIT PETITION NO.7112 OF 1996

DATE:23.02.2006

Between:

Nawar & Shathranji Handloom Weavers

Co-op. Society, Mandi Bazar, Warangal,

Through its President Devalapalli Rajaiah

..... PETITIONER

AND

The General Manager, the Warangal District

Cooprative Central Bank Ltd., Warangal,

And two others.

.....RESPONDENTS

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HON'BLE MR JUSTICE A. GOPAL REDDY

W.P. No.7112 OF 1996

ORDER:

This Writ Petition is filed to call for the records relating to and connected with the award proceedings No.ARC.817/95-96 in claim No.817 of 1995, dated 30.8.1995 of the third respondent and to quash the same as being illegal and arbitrary.

Normally, exercise of the jurisdiction under Article 226 of the Constitution of India is not called for when a statutory appeal is provided against the impugned order and unless the petitioner exhausts the alternative remedy available, this Court does not entertain the writ petition. Since the Writ Petition was admitted and has been pending nearly ten years, now it is not desirable to direct the petitioner-Society to avail the alternative remedy of appeal.

Heard the learned counsel for the petitioner and learned counsel for first respondent. None appeared for the second and third respondents. Perused the material on record.

It is not in dispute that in the year 1984 a nonviable society by name Bhavani Shatranji and Handlooms Weavers Co-operative Production and Sales Society Ltd., which has availed a certain sum from the first respondent-Bank, was amalgamated

with the petitioner-Society and on such amalgamation, all assets and liabilities have been taken over by the petitioner-Society. For due recovery of the cash credit amount of Rs.4,75,000/- alleged to have been availed by the Bhavani Shathranji & Handlooms Weavers Cooperative Production and Sales Society, the first respondent invoked the arbitrator clause. Thereafter, the arbitrator-the third respondent herein passed the award on 30.8.1995 in Claim No.817 of 1995 in favour of the first respondent-Bank, by simply filling up the blanks in the proforma.

A reading of the award do not indicate the particulars as to the claim made by the first respondent-Bank; basis for the claim and the amount that was fell due by the petitioner-Society as on the date etc. The case of the petitioner is that on receipt of the demand notice dated 23.9.1993 issued by the first respondent-Bank, the petitioner-Society got issued a reply notice on 1.10.1993 denying its liability to pay the amount. Subsequently, on receipt of the notice from the third respondent, the petitioner attended the office of the third respondent and made a request for furnishing a copy of the claim filed by the first respondent-Bank along with material papers or documents, if any filed by the first respondent-Bank to enable the petitioner-Society to file a suitable reply. According to the petitioner-Society, without furnishing the said documents and without giving an opportunity of personal hearing, the third respondent has passed the impugned award, which is not in tune of Rule 49 (4) of the A.P. Cooperative Societies Rules, 1964.

Learned counsel for the first respondent submits that his records shows that a counter affidavit has been filed, but no such counter affidavit is traceable in the file nor any USR number is given to show that counter affidavit has been filed. The very fact of respondents not coming forward for all these years though this Court stayed the further proceedings on 5.4.1996, itself belies the submission that the counter affidavit has been filed.

Be that as it may, the allegations made by the learned counsel for the petitioner-Society that the petitioner-Society was not supplied with the records in the claim No.817 of 1995 and the other documents filed by the first respondent-Bank on which basis the claim was made, are unrebutted and hence, the same are deemed to have been accepted. Further, as observed above, the third respondent while passing the impugned award did not give any reasons, but simply by filling up the proforma, directed the petitioner-Society to pay a sum of Rs.6,17,615/- with interest. It is well settled that even if the defendant is set ex parte and though he did not file

any written statement, the arbitrator is under obligation to pass a reasoned order.

Under those circumstances, the impugned award is set aside and the mater is remitted to the third respondent. The third respondent is directed to conduct a de nova enquiry by providing due opportunity to both the parties and pass appropriate speaking order.

The writ petition is accordingly disposed of. No costs.

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A. GOPAL REDDY, J

23rd FEBRUARY, 2006.

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